LIEW VOON YEW @ LEOW MON YAU

v.

MENTERI SUMBER MANUSIA & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING MOTION NO. R2-25-13-93]
31 OCTOBER 1994

***INDUSTRIAL LAW**: Employment - Dismissal - Application for certiorari to quash Minister's decision not to refer matter to Industrial Court - Failure to consider contents of notes of evidence taken at enquiry - Employer's refusal to supply further and better particulars of charges - Employer's refusal to allow legal representation to employee at domestic enquiry -Whether breach of rules of natural justice - Section 20(3) Industrial Relations Act 1967.*

The applicant joined the 2nd respondents as sales manager in 1985. Four charges were levelled against him by the 2nd respondent by a letter dated 9 October 1991 and a domestic enquiry was fixed on 15 October 1991, which was postponed at the applicant's request. The applicant made a written request to the 2nd respondent for further and better particulars of the charges and for permission to be allowed legal representation at the enquiry. Both requests were denied. At the domestic enquiry on 7 November 1991, the applicant left the enquiry room after his preliminary objections on lack of particulars of the charges were not entertained. The enquiry proceeded in his absence and found him guilty of 3 charges. The 2nd respondent then dismissed him on 1 January 1992.

The applicant applied to quash the Minister's decision not to refer his complaint to the Industrial Court on the ground that the Minister failed to assertain why the 2nd respondent refused to give further particulars, whether the charges required further and better particulars, that the applicant was not given a copy of the notes of evidence at the conciliation meeting with the Industrial Relation Officer and that the Minister failed to consider the contents of the notes of evidence of the enquiry to ascertain whether the charges had been proved.

Held:

[1] The applicant had given his side of the story at the conciliation meeting and his story was included in the report to the Minister. The failure of the Minister to look into the notes of evidence does not make his decision irrational.

[2] There is no legal right to legal representation at a domestic enquiry. The refusal to allow the applicant legal representation is not a breach of the rules of natural justice.

[3] The failure to supply further and better particulars of the charges to the applicant is not a breach of natural justice. The particulars of the charges were already sufficient for the purpose of the enquiry.

[Application dismissed with costs]

Cases referred to:

Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara [1990] 1 MLJ 351 ***(refd)***
Council of Civil Service Unions & Ors. v. Minister for the Civil Service [1985] AC 374 ***(refd)***
National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower [1980] 2 MLJ 189 ***(refd)***
R v. Secretary of State for Trade and Industry, ex p Lonrho plc [1989] 2 All ER 609 ***(refd)***

Minister of Labour Malaysia v. Lie Seng Fatt [1990] 2 MLJ 9 ***(refd)***
Minister of Labour Malaysia v. Sanjiv Oberoi & Anor. ***(refd)***
Sithambaram v. Attorney-General [1972] 2 MLJ 175 ***(refd)***
C. Jacob v. Attorney-General [1970] 2 MLJ 133 ***(refd)***
Teng Chang Khim v. Suruhanjaya Pulihanraya Malaysia [1994] 3 CLJ 122 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(1) (3)

For the applicant - N. Mahalingam; M/s Genga Maha Wong & Co.
For the 1st. respondent - Lee Chan Leong, FC
For the 2nd. respondent - Ramadass Arumugam; M/s Ramadass & Associates

JUDGMENT

Wan Adnam bin Ismail J:

This is an application for an order of certiorari to quash the decision of the Honourable Minister of Human Resources, the first respondent, not to refer the matter of the applicant's dismissal by the second respondent to the Industrial Court.

The applicant joined the second respondent on 27 June 1985 as a sales manager. The last position he held was that of branch manager Temerloh, Pahang. By letter dated 9 October 1991 the second respondent made four charges against him as follows:

(1) That you, on or about 3 September 1991 and 4 September 1991 in breach of your duties and responsibilities and as an abuse of your position as a branch manager had without cause verbally abused one salesman, Aut Tong Hoi at Temerloh branch causing him emotional distress and embarrassment and thereby committing a breach of terms and conditions of employment.

(2) That you, on or about the period between January 1991 to August 1991 had demanded and received without lawful authority on your own accord and/or through your agent the sum of RM200 each from seven (7) salesmen, for the purposes of respraying your car bearing registration no: Proton 840 and thereby breaching your duties and abusing your position as a branch manager under the terms and conditions of employment.

(3) That you, on or about the periods between January 1991 to August, 1991 had demanded and received on six (6) separate occasions without lawful authority, the sum of RM200 each from salesman, Au Tong Hoi as "Spotter Fee" for any clients/customers introduced by you and thereby breaching your duties and abusing your position as a branch manager under the terms and conditions of employment.

(4) That you on or about the periods between March 1991 to August 1991 at Temerloh branch had committed acts of gross indecency on pantry maid, Cik Amisah bte Mohamad, thereby breaching your duties and abusing your position as a branch manager under the terms and conditions of employment.

By the same letter he was requested to attend a domestic enquiry on 15 October 1991 at 10.30 a.m. He was told that he would be allowed to bring witnesses and relevant documents and that he would be allowed to cross-examine the company witnesses. At his request the enquiry was postponed to another date.

By letter dated 17 October 1991 he wrote to the second respondent and asked for further particulars about the charges as follows:

I further request from you for further and better particulars with regard to the following:

(1) I would wish to know the exact date or dates between January 1991 and August 1991 with regard to the alleged demand and receipt of RM200 made by me in respect of each of the seven (7) salesmen.

(2) I wish to know the exact dates or date between January and August 1991 when I in fact allegedly demanded and received RM200 on six occasions from Au Tong Hoi as "Spotter fee"

(3) But with regard to the alleged fourth (4th.) charge kindly furnish the exact date or dates between January and August 1991 when the alleged acts of indecency were committed on the pantry maid Cik Amisah bte Mohamad.

I would further wish to know the details of what is "gross indecency". For my information let me know whether it is rape, attempted rape, outrage of modesty or any unnatural offence.

He also asked for permission to be represented by Counsel at the enquiry. Both his requests were denied.

The domestic enquiry was finally held on 7 November 1991. At the outset the applicant raised certain preliminary objections. These objections essentially related to the lack of particulars in regard to the charges against him. His objections were not entertained. Consequently he left the room. He was invited in again but he said as he could not participate without the particulars he asked he refused to further attend the enquiry and left the room. The enquiry continued in his absence and found him guilty on three of the four charges, namely charges no. 2, 3, 4. By letter dated 27 December 1991 he was dismissed by the second respondent with effect from 1 January 1992.

By letter dated 15 January 1992 he lodged a complaint to the Minister under s. 20(1) of the Industrial Relations Act 1967. At the conciliation meeting the representative of the second respondent handed to the Industrial Relations Officer the notes of evidence taken and the documents produced at the domestic enquiry. He asked for a copy but was denied.

By letter dated 23 December 1992 the first respondent refused to refer the representation under s. 20 of the Act to the Industrial Court.

The Industrial Relations Officer was Encik Md. Hairi bin Md. Salleh. In his affidavit affirmed on 14 April 1994 he said in regard to the meeting he had with the applicant and the representative of the second respondent as follows:

7. Merujuk kepada fasal 17 affidavit tersebut, saya mengatakan bahawa saya telah meminta wakil respondent kedua supaya membekalkan pemohon sesalinan daripada nota sisatan dalaman tetapi wakil respondent kedua tidak setuju dengan permintaan saya atas alasan dokumen itu adalah untuk kegunaan pejabat Perhubungan Perusahaan sahaja.

8. Oleh yang demikian, saya pula mencadangkan supaya saya akan merujuk kepada nota siasatan tersebut di hadapan kedua-dua pihak supaya pemohon dapat mendengar dan mengetahui apa yang terkandung dalam nota siasatan tersebut dan dengan demikian pemohon boleh menjawab ataupun menyangkal sekiranya difikirkan perlu. Namun demikian, pemohon tetap dengan pendirian beliau bahawa kecuali satu salinan nota siasatan tersebut dibekalkan kepadanya, beliau tidak akan mengadakan apa-apa perbincangan sama sekali.

9. Bagi tujuan menyediakan laporan kepada KPPP, saya telah minta kedua-dua pihak supaya bekerjasama dan memberi keterangan masing-masing. Wakil responden kedua telah membacakan keempat-empat tuduhan terhadap pemohon dan memaklumkan pemohon telah didapati bersalah atas tuduhan kedua, ketiga dan keempat. Sebaik sahaja wakil responden kedua menghabiskan kenyataan mereka, pemohon tiba-tiba menjadi marah lalu bangun dan hendak keluar dari pejabat saya. Apabila diminta duduk semula, pemohon pula kata beliau akan duduk dengan bantahan. Walau bagaimanapun, saya telah meminta pemohon supaya memberi kenyataan beliau dan beliau akhirnya telah memberi keterangan yang kemudiannya telah dicatitkan dalam laporan saya kepada KPPP.

He further said in his affidavit as follows:

12. Semasa saya memaklumkan KPPP bahawa tiada perdamaian dicapai, saya telah juga memaklumkan antara lain, fakta-fakta yang berikut:

a. Pemohon telah berkhidmat dengan responden kedua sejak 28 June 1985.

b. Pemohon telah menafikan segala tuduhan yang ditujukan terhadapnya oleh responden kedua.

c. Responden kedua telah enggan membekalkan butir-butir lanjut mengenai tuduhan-tuduhan terhadap pemohon.

d. Pemohon telah ditolak permintaannya untuk diwakili seorang Peguam semasa perjalanan siasatan dalaman.

e. Pengataan pemohon bahawa pegawai penyiasat juga bertindak sebagai pegawai pendakwa.

f. Pengataan pemohon bahawa "Grievance Procedure" tidak dipatuhi.

g. Pemohon telah membuat bantahan awal kepada perjalanan siasatan dalaman dan tidak menghadiri siasatan tersebut.

13. Saya telah juga memaklumkan KPPP fakta-fakta yang berikut:

a. Satu siasatan dalaman telah diadakan untuk menyiasat tuduhan-tuduhan terhadap pemohon.

b. Tuduhan-tuduhan telah dinyatakan dalam notis siasatan responden kedua bertarikh 9 October 1991. Notis tersebut dikemukakan sebagai ekshibit " MH -2"

c. Notis tersebut memaklumkan siasatan akan diadakan pada 15 October 1991 pukul 10.30 pagi di Rumah Rehat Temerloh.

d. Pemohon telah juga dimaklumkan bahawa beliau boleh membawa bersama saksi-saksi dan segala dokumen-dokumen yang berkaitan serta berhak menyoal balas saksi-saksi responden kedua.

e. Pemohon juga dimaklumkan sekiranya beliau gagal hadir, siasatan akan dijalankan secara *ex-parte.*

f. Pemohon telah dinafikan permintaannya untuk diwakili seorang Peguam kerana siasatan tersebut merupakan siasatan dalaman.

g. Sebelum siasatan dalaman dijalankan pada 15 October 1991, pemohon telah memohon penangguhan dan responden kedua telah membenarkan permohonan pemohon dan kemudiannya telah menetapkan siasatan pada 7 November 1991 dan 8 November 1991.

h. Pemohon telah menghadiri siasatan dalaman pada awalnya tetapi telah enggan menyertai perjalanan siasatan yang seterusnya.

i. Setelah tamatnya siasatan, pemohon didapati bersalah atas tuduhan kedua, ketiga dan keempat sepertimana yang dinyatakan dalam notis siasatan bertarikh 9 Ocotber 1991.

The affidavit of Encik Mazlan Mansor affirmed on 18 April 1994 was filed on behalf of the second respondent. The relevant points are as follows:

5. Jesteru notis tersebut diterima oleh pemohon, pemohon telah meminta supaya siasatan domestik ditunda untuk membolehkannya menyediakan pembelaan. Beliau juga telah memohon butir-butir lanjut tuduhan yang terkandung di dalam notis tersebut. Responden kedua telah bersetuju meminda siasatan domestic tersebut ke suatu tarikh yang dipersetujui oleh kedua-dua pihak akan tetapi berdasarkan notis tersebut telah menyatakan dengan jelas tuduhan yang dibuat terhadap pemohon, memutuskan bahawa pemohon tidak memerlukan butiran lanjut tuduhan-tuduhan tersebut untuk membelakan dirinya dengan sempurna.

6. Seterusnya pemohon telah memohon supaya dirinya diwakili oleh seorang peguamcara di siasatan domestik. Oleh kerana siasatan domestik tersebut hanya merupakan suatu penyiasatan rasmi dan bukan merupakan perbicaraan Mahkamah, responden kedua tidak membenarkan permohonan tersebut.

7. Tarikh baru siasatan domestik ditetapkan pada 7 dan 8 November 1991 setelah tarikh 23 Oktober 1991 dan 7 November 1991 ditunda atas permintaan pemohon. Pada pagi itu, pemohon telah enggan mengambil bahagian di dalam siasatan tersebut walaupun beliau dijemput menghadiri siasatan tersebut. Oleh kerana panel siasatan memutuskan bahawa pemohon telah diberi peluang yang mencukupi untuk menyediakan dirinya untuk siasatan tersebut dan beliau sengaja enggan menghadiri dan/atau mengambil bahagian di dalam siasatan tersebut, siasatan telah dijalankan tanpa kehadiran pemohon.

10. Semasa mesyuarat perdamaian tersebut sedang dijalankan memang benar, seperti yang dinyatakan oleh pemohon di perenggan 17 afidavitnya, nota-nota siasatan domestik telah diserahkan kepada pengarah perhubungan perusahaan, Kuantan (selepas ini dirujuk sebagai pegawai tersebut) yang sedang mempengerusikan mesyuarat tersebut. Akan tetapi kenyataan selanjutnya di perenggan 17, 18, 19, 20 dan 21 bahawa beliau tidak tahu isi kandungan dokumen-dokumen yang diserahkan kepada Pegawai tersebut dan oleh itu beliau berada dalam keadaan memeras sepanjang mesyuarat perdamaian tersebut adalah tidak benar. Kandungan nota siasatan tersebut telah dibincangkan dengan pemohon sendiri semasa penyelesaian cuba dicapai. Oleh itu jika terdapat keterangan yang memudaratkan di dalam nota siasatan tersebut, yang dinafikan sama sekali, pemohon telahpun diberi peluang untuk menjelaskan apa-apa percanggahan fakta.

The Honourable Minister in his affidavit affirmed on 11 April 1994 said as follows:

4. Pada 29 June 1992 saya telah dimaklumkan oleh Ketua Pengarah Perhubungan Perusahaan bahawa perkara ini tidak dapat diselesaikan melalui rundingan damai. Laporan beliau mengandungi segala langkah yang diambil oleh Pegawai Perhubungan Perusahaan yang mempengerusikan mesyuarat tersebut.

5. Dalam menjalankan fungsi dan tugas saya di bawah Seksyen 20(3), Akta Perhubungan Perusahaan 1967, setelah mempertimbangkan dengan teliti permohonan pemohon dalam konteks fakta-fakta yang mengelilingi kes ini, saya **tidak** berpendapat bahawa rayuan pemohon adalah wajar untuk dirujuk ke Mahkamah Perusahaan.

7. Dalam mencapai keputusan tersebut, saya telah ambil maklum segala fakta yang diperolehi dalam usaha rundingan damai yang diambil oleh Jabatan Perhubungan Perusahaan.

8. Merujuk kepada fasal 23 afidavit tersebut, saya semasa membuat keputusan telah ambil maklum bahawa pemohon pernah membuat bantahan awal semasa siasatan dalaman dan juga alasan-alasan bantahan. Saya telah juga memgambil tahu fakta bahawa pemohon telah meminta butir-butir yang lebih lanjut mengenai tuduhan-tuduhan terhadap beliau tetapi responden kedua telah enggan menunaikan permintaan teresebut. Saya juga dimaklumkan pemohon tidak pernah dibekalkan sesalinan daripada nota siasatan semasa mesyuarat perdamaian diadakan.

9. Merujuk kepada fasal-fasal 24, 25 dan 26 afidavit tersebut, saya mengatakan bahawa semasa membuat keputusan, saya **tidak** merujuk ke dalam kandungan nota siasatan kecuali dan sekadar bagi tujuan menentukan satu siasatan telah dijalankan.

10. Merujuk kepada fasal 27 afidavit tersebut, saya menafikan setiap dan tiap-tiap pengataan dalamnya yang meragui keesahan keputusan saya. Sebaliknya saya telah menggunakan budibicara saya secara suci hati semasa membuat keputusan tersebut.

What are the relevant principles which govern the position of judicial review of administrative actions.

In the case of *Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara* [1990] 1 MLJ 351 the Supreme Court adopted the principle enunciated by Lord Diplock in *Council of*

Civil Service Unions & Ors. v. Minister for the Civil Service [1985] AC 374. Lord Diplock said:

> Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.
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> By 'illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the state is exercisable.
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> By 'irrationality', I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' *(Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.* [1948] 1 KB 223). It replies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.
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> I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decisions. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

In the case of *National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower* [1980] 2 MLJ 189 the Federal Court had this to say:

> This subjective formulation is sufficient in our opinion to show that the Minister has a discretion to determine the desirability or otherwise of a particular course of action within the scope of the discretionary power. It is the exercise by him of the discretion vested in him, not in the Courts, that we are here required to review, and when his action is challenged in the Courts for alleged abuse of discretion, we are obliged to resist any temptation to convert our jurisdiction to review into a reconsideration of the merits as if on appeal.

The Federal Court further said:

> Looking at the factual basis upon which he invoked his discretionary power, we are satisfied that he had exercised it in a manner which is in accord with the intention of the Act. He is an elected Minister and is entitled to have his opinion of Industrial problems within the area of his responsibility respected. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient. "The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred."

In *R v. Secretary of State for Trade and Industry, ex p Lonrho plc* [1989] 2 All ER 609, Lord Keith of Kinkel in the House of Lords said:

> The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the Court draws the inference that he had no rational reason for his decision.

In the case of *Minister of Labour, Malaysia v. Lie Seng Fatt* [1990] 2 MLJ 9, the Supreme Court said:

> There is no question that the power of the Minister under s. 20 (3) of the Act is wide and the language used by the legislature would seem to confer on the minister a wide discretion whether to refer or not to refer a dispute to the Industrial Court depending on the facts of each case provided of course he has acted *bona fide*, that is without any improper motive, and he has not taken into account extraneous or irrelevant matters. He has an unfettered discretion but it should not be exercised so as to frustrate the object of the statute itself.

In the case of *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor.*, the Supreme Court held that the Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967.

Before me it was contended that the Minister had failed to take into account certain relevant facts. The Minister did not ascertain why the second respondent refused to give particulars and whether the charges required further and better particulars. At the conciliation meeting the applicant was not given a copy of the notes of evidence. The Minister should have seen the Notes of Evidence to see if the charges against the applicant had been proved and that the applicant had been dismissed with just cause.

The Industrial Relations Officer had reported to the Minister all the relevant facts that he had gathered at the meeting. In paragraph 9 of the affidavit he said that the applicant gave his side of the story and that he included that story in his report.

The Minister in his affidavit had stated that he had taken into consideration all relevant facts. What was made an issue by the learned Counsel for the applicant was that the Minister did not consider the contents of the notes of evidence taken at the enquiry. The Minister had just ascertained that an enquiry was held. According to him the Minister should have gone through the notes to find out if the charges had been proved.

The Minister did not (as he is entitled so to do) give reasons why he did not go through the notes.

The notes were given to the Industrial Relations Officer at the conciliation meeting. The four charges were read at the meeting in the presence of the applicant. The applicant gave his side of the story and his story was included in the report that finally went to the Minister. The failure of the Minister to look into the notes of evidence does not make his decision irrational.

The failure of the second respondent to supply further particulars of the charges to the applicant and their refusal to allow the applicant to be represented by Counsel at the enquiry are not breaches of the rules of natural justice. The particulars given on the charges were already sufficient for the purpose of the enquiry. The applicant wanted to know the exact dates. These will be determined at the enquiry after the witnesses had given evidence and he was told he would be allowed to cross-examine these witnesses.

On legal representation at the enquiry, it is well established that there is no such legal right. Therefore refusal to allow legal representation is not a breach of the rules of natural justice. (See *Sithambaram v. Attorney-General* [1972] 2 MLJ 175, and *V.C. Jacob v. Attorney-General* [1970] 2 MLJ 133, and *Teng Chang Khim v. Suruhanjaya Pulihanraya Malaysia* [1994] 3 CLJ 122).

There is no evidence that the Minister had acted unreasonably or that he had acted in bad faith.

The application is dismissed with costs.